

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2280 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

PRABHATSINH SHIVAJI

Versus

DGP

Appearance:

MR YN OZA for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 01/08/96

ORAL JUDGEMENT

Prabhatsinh Shivaji has filed the present petition under article 226 of the Constitution of India to challenge the order of suspension passed against him.

The petitioner was on guard duty in the night on 22/23-4-84 and when his superiors had checked they found him sleeping at the time of checking and for that purpose they had passed an order of suspension on 24.5.83 and started departmental proceedings against the petitioner. The petitioner has come before this court for quashing the order of suspension as well as quashing the order of departmental proceedings . He had also sought interim relief and this court was pleased to grant ad interim relief only as regards the suspension order on 6.5.85 said interim order has remained in force from that date till today. The L.A for the petitioner states that he does not press other prayers in this petition however, he says that he did not know what is the outcome of the departmental proceedings.

2. The checking was carried out by the superiors of the petitioner and they had found that the petitioner was sleeping when he was on guard duty. Those two officers were only witnesses against the present petitioner as regards his remaining at the station where he was posted at the time of passing of the suspension order. It could not be said that by continuing at the said station there was any likelihood of he tampering with those witnesses and thereby creating obstruction in the departmental proceedings as the witnesses were his superiors. In view of the nature of misconduct alleged against the petitioner, order of suspension was not justified. I therefore, hold that the order of suspension will have to be quashed.

3. As regards the claim for quashing of the departmental inquiry it must be said that the petitioner himself has clearly admitted that he was found sleeping when he was on guard duty, when his superiors checked. His claim is that such type of act would not amount to misconduct in view of the practice prevailing while performing guard duty. But that would be a question to be decided in the full fledged departmental inquiry. On the basis of the material on record it could not be said that there was no justification in holding departmental inquiry against him. Therefore, in the circumstances, his prayer for quashing the departmental proceedings could not be granted. I therefore, partly allow the present petition. Only the order of suspension passed against the petitioner on 24.5.84 is hereby quashed and set aside. Other prayer is rejected. Rule is made absolute in the aforesaid terms. No order as to costs.

